

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

**REPLY COMMENTS
OF
CELLULAR SOUTH, INC.**

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Summary

In the recently-released *Sixth Broadband Deployment Report*, the Commission concluded for the first time that broadband services are not being deployed to all Americans in a reasonable and timely fashion. Not surprisingly, the Commission found that low-income citizens and those living in rural areas are disproportionately impacted. This continued lack of access to voice and broadband service not only negatively impacts daily quality of life, it also impairs the ability of law enforcement and public safety officials to respond to emergencies – a situation described in the starkest of terms by Senate Commerce Committee Chairman John D. Rockefeller, IV in a letter to Chairman Genachowski last week.

Cellular South has witnessed the devastation wrought by hurricanes and other natural disasters. It has successfully kept its network up, and restored service in extraordinary fashion following Katrina and other disasters. Yet, it cannot use high-cost support to roll out the latest in broadband infrastructure. The company is ready, willing and able to move forward.

Given the lack of access to broadband among large swaths of the country, the exploding demand for broadband service will not be met if current policies are continued. If the Commission wants to take truly immediate action to accelerate broadband deployment in rural America, it should take the following steps, which can be accomplished in very short order:

First, the Commission should issue a declaratory ruling, *sua sponte*, clarifying that carriers are required to use high-cost support to deploy facilities that carry both voice and data, including specifically, 3G CDMA and LTE networks. Nothing the FCC can do in the next year will accelerate broadband deployment as much as permitting existing carriers to immediately use federal high-cost support to deploy broadband networks.

Second, the Commission should implement the Verizon Wireless and Sprint merger conditions without further delay and in a way that does not unlawfully restrict funding to other CETCs. Specifically, Cellular South urges the Commission to: (1) Grant the Corr Wireless request for review and instruct USAC to make the phase-down amounts available to other CETCs under the Interim Cap as required; (2) Implement the phase-down in the areas Verizon Wireless is required to divest up until such time as they are actually divested; (3) Calculate the 20% phase-downs from a fixed amount equal to the capped support Sprint and Verizon Wireless were receiving as of the effective dates of their respective mergers; and (4) Treat Verizon Wireless' relinquishment of ETC status in several states as separate from the phase-down. The phase-down should be implemented on an accelerated basis to enforce the companies' voluntary commitment to a five-year horizon ending December 31, 2012.

Beyond those short-term measures, Cellular South has the following recommendations:

Minimum Broadband Speed Thresholds

Cellular South believes that the 4 MBPS downlink and 1 MBPS uplink proposal in the National Broadband Plan should be adopted. As the Commission's data demonstrates, there are

far too many rural areas with dial-up or slow DSL access, and this minimum speed would provide an baseline of broadband capability. The Commission can update the minimum speed as technology advances, to ensure that consumers have access to increasingly fast broadband speeds. Calls by ILECs for unrealistically high speed thresholds should be rejected as anticompetitive attempts to shut out wireless competition. Wireline carriers are free to invest in facilities that provide much higher speeds, and they will gain competitive advantages that flow therefrom.

Development of a Model

The Commission should consider using a model to help determine the efficient costs of building broadband networks in rural areas. Any such model must be designed to allow carriers to compete for customers and support in rural areas. Properly constructed, a model can apportion an appropriate level of support to a high-cost area, while preserving the benefits of competition. Because support is calculated by the number of subscribers, a model would act as a cap on support, no matter how many carriers attempt to build facilities and enter.

There is no record evidence to support the claim by certain commenters that wireline carriers are the more efficient provider of broadband services. Given that some carriers have failed to roll out service after so many decades, any claims that they would now be an efficient provider of services should be carefully considered. Any presumption that any class of carrier will be an efficient provider of services must be rejected in favor of a fact-based analysis that targets efficient support to carriers that consumers choose.

Also, the comments reflect a widespread agreement that more accurate targeting of support is needed. The FCC long ago adopted rules for targeting support to areas served by rural ILECs, and it is more important than ever to make disaggregation mandatory.

Market-Based Approaches

A system of subsidies based on reverse auctions would fail to uphold the Commission's own goal of advancing the dual goals of universal service and competition and denies Americans the very benefits that universal service was intended to deliver. As such, a reverse auction methodology is inconsistent with the telecommunications act of 1996 and should therefore be rejected.

Phase-Outs of Existing Support

There was widespread agreement in the comments that that phase-outs of support provided under existing mechanisms should not occur until new support mechanisms are adopted and implemented. There was also significant agreement that phase downs should be symmetrical, and not afford an advantage to any class of carrier.

Competitive Neutrality

Universal service reform must continue to strip away set-asides and other artificial structures that insulate incumbents from the business world and prevent our nation's citizens from accessing the services they want and need. Therefore, calls by some commenters to make IAS and ICLS unavailable to competitors must be rejected.

Rate of Return Regulation

There are two core problems with rate of return regulation: First, under the current rate of return/embedded cost methodology, the more you spend, the more you get. Second, no matter how many customers a rate of return carrier loses, the amount of support remains level. The easiest fix is limiting support to each carrier based on an efficient methodology – which eliminates the possibility of gaming the system through a rate of return mechanism. Nothing the Commission does with respect to responsible fund administration will be more important than eliminating rate of return regulation.

Accountability for Use of Support

Cellular South favors accountability because it enables regulators to see clearly how public dollars are being invested for the benefit of citizens in rural and high-cost areas. Most states have put in effective reporting requirements to ensure CETCs using support as required by the Act, but many wireline incumbents do not report their costs and have no accountability for how support is invested. It is not enough to say that support keeps rates affordable. Rather, a demonstration must be made as to what investments are being made with funds received, and how consumers are seeing tangible benefits from support provided.

Carrier of Last Resort Fallacy

The Commission should reject assertions by wireline carriers that they should be permitted to continue to receive the same levels of support, even as customers leave their networks, because they need to meet carrier-of-last-resort (“COLR”) obligations. In a market with facilities-based, last-mile competition, the incumbent LEC has a market-based incentive to extend its network so that it can have the opportunity to serve these customers, rather than ceding that opportunity to a competitor. Build-out by the incumbent LEC in these cases is clearly not attributable to its COLR obligations. Even in cases in which the incumbent LEC must extend its network pursuant to its COLR obligations, this requirement is, in most states, limited by the terms and conditions of the carrier's line extension tariff, which mitigate substantially any burden—economic or otherwise—on the incumbent LEC. Thus, rather than imposing a substantial net burden on rural incumbent LECs, COLR requirements actually provide the incumbents with a significant competitive advantage.

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Cellular South, Inc. (“Cellular South”), by counsel, hereby submits these reply comments, pursuant to the Commission’s Notice of Inquiry and Notice of Proposed Rulemaking in the above-captioned proceeding.¹

Cellular South is the nation’s largest privately-held wireless carrier by number of subscribers, serving all of Mississippi as well as portions of Florida, Alabama and Tennessee. The area Cellular South serves is overwhelmingly rural and the company faces enormous challenges in competing with the “Big Two” carriers that currently dominate the commercial mobile wireless industry in this country.

For a number of years, Cellular South has used federal high-cost support to accelerate infrastructure development in rural Mississippi and Alabama. It has demonstrated significant success in increasing the availability of supported services throughout the areas where it has been

¹ *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58, 2010 WL 1638319, rel. Apr. 21, 2010 (“*NOI*” and “*NPRM*”).

designated as an eligible telecommunications carrier (“ETC”). Cellular South is accountable for all of the funding that is provided. Each quarter, Cellular South submits a report to the Mississippi Public Service Commission detailing its activities, investments and plans for investing support in Mississippi’s rural areas. Cellular South makes a similar demonstration with respect to its Alabama rural areas in its annual reports to the FCC. In support of these reply comments, the following is respectfully shown:

I. THE COMMISSION SHOULD MOVE PROMPTLY TO ALLOW EXISTING ETCs TO USE SUPPORT FOR BROADBAND

A. There is a Pressing and Immediate Need for Greater Investment in Infrastructure Capable of Delivering Broadband Services.

On July 20, 2010, the Commission released its *Sixth Broadband Deployment Report*.² For the first time, the Commission concluded that broadband services are not being deployed to all Americans in a reasonable and timely fashion.³ Not surprisingly, the Commission found that low-income citizens and those living in rural areas are disproportionately impacted.⁴

This continued lack of access to voice and broadband service not only negatively impacts daily quality of life, it also impairs the ability of law enforcement and public safety officials to respond to emergencies. On August 2, 2010, Senate Commerce Committee Chairman John D. Rockefeller, IV wrote to Chairman Genachowski to urge him to move forward quickly to reform universal service and to accelerate broadband deployment to rural areas. In describing events

² *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, GN Docket Nos. 09-137, 09-51, Report, FCC 10-129 (rel. July 20, 2010) (“2010 Sixth Broadband Deployment Report”).

³ *Id.* at ¶ 28.

⁴ *Id.*

following the explosion at the Upper Big Branch mine, Senator Rockefeller could scarcely have been clearer:

Following the explosion, ambulances and helicopters were dispatched from surrounding counties. Rescue workers set out to drill holes to release dangerous concentrations of methane gas. But without wireless phone service available in the hills near the mine, communication and coordination were extraordinarily difficult. Before temporary satellite services were brought in, responders were forced to drive up and down the mountain from the drill site to the command center to get basic information.

The situation was no better for the families. Many of them had to stand in long lines to use two of the three traditional phone lines available in an on-site office. Wives, mothers, siblings, and children waited to relay difficult information about the fate of their husbands, fathers, and brothers.

Explosions like what happened at Upper Big Branch may be unique to mining states. But the communications deficit this tragedy exposed is not. The same challenges exist in other rural areas, where the terrible impact of floods, hurricanes, tornados, and even acts of terror, can be made worse still by inadequate communications infrastructure.

I believe the residents of these rural communities need to know that they have the same access to quality communications as those in urban areas. This is not just my opinion. As you know, it's the law.

* * * *

Inequities in basic infrastructure, like the ones exposed by the mining disaster in West Virginia, are profoundly unacceptable. In order to honor the spirit of universal service and the legal requirements of Section 254, the FCC must act to remedy this situation. ***Everyone in this country, no matter who they are or where they live, deserves access to modern communications services, including broadband and wireless services.***⁵

Senator Rockefeller's urging that the Commission move forward with dispatch to remedy the profoundly unjust disparities in access to high-quality communications infrastructure calls out for action. Moreover, the Communications Act requires the Commission to "take immediate

⁵ Correspondence from Senate Commerce Committee Chairman John D. Rockefeller, IV to Chairman Julius Genachowski, August 2, 2010 (emphasis added).

action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”⁶

Cellular South has witnessed the devastation wrought by hurricanes and other natural disasters. It has successfully kept its network up, and restored service in extraordinary fashion following Katrina and other disasters. The company is ready, willing and able to use high-cost support to roll out the latest in broadband infrastructure, immediately.

Aside from the critical health and safety benefits of mobile wireless and mobile broadband service, Cellular South can state authoritatively that its customers want immediate access to mobile broadband services to assist in economic development and job creation. The company receives daily inquiries from existing and prospective customers about the availability of broadband services in rural areas. To date, Cellular South has been able to make a business case for deploying 3G CDMA data services throughout much of its operating territory, but without access to high-cost support, it is unclear when, or even whether a 4G network will be deployed throughout much of the rural territories that Cellular South serves.

Demand for mobile broadband services is exploding, and the Communications Act sets a goal for the Commission to provide rural citizens with access to telecommunications and advanced information services that are reasonably comparable to services available in urban areas.⁷ 3G wireless services on CDMA networks allow users to access many data applications, including the ability to view some video streaming. That said, the throughput of 3G, especially in areas where demand is strong, is insufficient to deliver a robust broadband experience for consumers. Upcoming Long Term Evolution (“LTE”) networks promise much higher

⁶ See 47 U.S.C. § 1302(b).

⁷ 47 U.S.C. § 254(b)(3).

throughput rates, enabling users to have access to a much broader array of broadband applications commonly used today.⁸ Moreover, LTE air cards will provide consumers with a competitive alternative to DSL and cable modem service, along with mobile access that is so important to many business users.⁹ Competition in this area will lead to lower prices and higher quality service for consumers. LTE is rolling out this year and could be widely available by the end of 2011.¹⁰

B. The Commission Should Take Immediate Steps to Improve Access to Broadband and Support Growing Demand for Such Services.

On August 6, 2010, the Commission released its Seventh Broadband Deployment Notice of Inquiry.¹¹ This Notice of Inquiry kicks off another round of proceedings to analyze broadband deployment throughout the country. What it does not do is fulfill the Congressional directive to take immediate action.

Given the lack of access to broadband among large swaths of the country, the exploding demand for broadband service will not be met if current policies are continued. If the Commission wants to take truly immediate action to accelerate broadband deployment in rural America, it should take the following steps, which can be accomplished in very short order:

1. Issue a clarification of a prior Commission ruling that permits all ETCs to use support to invest in dual-purpose networks.

⁸ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, WT Docket No. 09-66 (rel. May 20, 2010) (“14th CMRS Competition Report”) at ¶¶ 108-112.

⁹ *Id.* at ¶ 342.

¹⁰ *Id.* at Table 11.

¹¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Deployment Notice of Inquiry, FCC 10-148 (rel. Aug. 6, 2010).

The Commission should issue a declaratory ruling, *sua sponte*, clarifying that carriers are required to use high-cost support to deploy facilities that carry both voice and data, including specifically, 3G CDMA and LTE networks. Nothing the FCC can do in the next year will accelerate broadband deployment as much as permitting existing carriers to immediately use federal high-cost support to deploy broadband networks.

Cellular South is aware that reclassification presents difficulties. We therefore urge the Commission to simply build upon the language of its *RTF Order*, which declared that investments can be made for dual-purpose networks:

[U]se of support to invest in infrastructure capable of providing access to advanced services does not violate section 254(e), which mandates that support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." The public switched telephone network is not a single-use network. ***Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services.*** High-cost loop support is available to rural carriers "to maintain existing facilities and make prudent facility upgrades[.]" ***Thus, although the high-cost loop support mechanism does not support the provision of advanced services, our policies do not impede the deployment of modern plant capable of providing access to advanced services.*** Rural carriers may consider both their present and future needs in determining what plant to deploy, knowing that prudent investment will be eligible for support. The measures that we adopt in this Order will increase incentives for carriers to modernize their plant by increasing the total amount of high-cost loop support available under the cap.¹²

¹² *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11322 (2001) ("RTF Order") (emphasis added).

Current 3G networks allow consumers to access the nine supported services through Voice over IP (VoIP) platforms, such as for example, Vonage or Skype. As long as ETCs offering service deliver to consumers access to all nine supported services, it is in the public interest to encourage deployment of dual-purpose networks that permit access to VoIP platforms, while also providing broadband access.

Likewise, soon-to-be-deployed LTE networks will allow both voice and data applications to flow through the same equipment. That is, LTE networks will carry the supported services as IP traffic. Allowing companies such as Cellular South to *immediately* use support flowing from the existing mechanism to invest in dual-purpose broadband technologies is the best way to demonstrate to Congress that the Commission is taking *immediate and concrete* steps to accelerate broadband deployment in rural America.

2. Implement the Verizon Wireless and Sprint Merger Conditions Without Further Delay and in a Way that Does Not Unlawfully Restrict Funding to Other CETCs.

Both Verizon Wireless and Sprint, as conditions for approval of their respective mergers, committed to have their support phased down to zero in equal 20% increments each year starting on December 31, 2008. Twenty months later, it is baffling that the phase-down has not even started.¹³

The Corr Wireless Request for Review,¹⁴ filed nearly 18 months ago, is ripe for action.¹⁵ Put simply, Corr's petition asks the Commission to confirm that the cap on high-cost support to

¹³ See NASUCA NPRM Comments at 15 ("NASUCA responds that, given that these commitments were made in 2008, why should it take a Commission order to make the commitments real? Have these reductions not already occurred?") (footnote omitted).

¹⁴ See Request for Review by Corr Wireless Communications, LLC of Decision of Universal Service Administrator, CC Docket No. 96-45, WC Docket No. 05-337 (filed Mar. 11, 2009); "Comment Sought on Corr Wireless, LLC Request for Review of a Competitive Eligible Telecommunications Carrier High-Cost Support Decision of the Universal Service Administrative Company," *FCC Public Notice*, DA 09-805 (rel. Apr. 9, 2009).

CETCs, adopted pursuant to a notice-and-comment rulemaking, cannot be modified by the Verizon Wireless and Sprint merger orders. Cellular South has advocated several steps the Commission should take to ensure the lawful implementation of the merger conditions:¹⁶

- Grant the Corr Wireless request for review and instruct USAC to make the phase-down amounts available to other CETCs under the Interim Cap as required. ARC estimates that at least half of the phase-down amounts will be available for other purposes and will not be redistributed to other CETCs;
- Implement the phase-down in the areas Verizon Wireless is required to divest up until such time as they are actually divested;
- Calculate the 20% phase-downs from a fixed amount equal to the capped support Sprint and Verizon Wireless were receiving as of the effective dates of their respective mergers; and
- Treat Verizon Wireless' relinquishment of ETC status in several states as separate from the phase-down, so that the phase-down is calculated independently of the support forgone through relinquishment.

In addition, Cellular South agrees with Windstream that phase-downs should be implemented now, in accordance with the companies' voluntary commitments.¹⁷ The Commission should act promptly to recover all of the excess support paid to Verizon Wireless and Sprint and ensure that their support reaches zero by 2012, the fifth year of the phase-down.

¹⁵ 47 C.F.R. § 54.724(a) ("The Wireline Competition Bureau shall, within ninety (90) days, take action in response to a request for review of an Administrator decision that is properly before it.")

¹⁶ A more detailed discussion can be found in the letters filed on behalf of Cellular South and other members of the Alliance of Rural CMRS Carriers in WT Docket No. 08-94 and 08-95, CC Docket No. 96-45, and WC Docket No. 05-337 on May 7, 2010, and July 26, 2010.

¹⁷ See Windstream Comments at 32 ("Regardless of whether the Commission has yet begun to execute these phase-outs, both companies have been on notice since November 2008 that they would lose all CETC high-cost funding by the end of 2012. The companies made commitments in support of this timeline and already have over-recovered.")

This implementation timetable will make approximately \$1 billion available for broadband deployment sooner rather than later.¹⁸

If the Commission follows the recommendation of Verizon Wireless,¹⁹ millions of dollars in support that could be used by wireless carriers to invest in advanced broadband networks will be forgone. Given that the new funding mechanisms have not yet been formally proposed, it is fair to conclude that actual use of support to deploy broadband would be delayed by years.

Any delay in taking action that would improve broadband deployment does not serve the public interest, does not comply with the Communications Act's directive to take immediate action, and certainly does not respond to Senator Rockefeller's urging that the Commission move with dispatch. The two solutions set forth above represent steps the Commission can take immediately, and they would have immediate and measureable benefits in rural America. There are ample mechanisms in place to permit the FCC and state commissions to ensure that funds are being used to build new cell sites and deploy dual-purpose networks for the benefit of rural citizens, and Cellular South fully supports such accountability measures.

II. THE 4 MBPS DOWNLINK AND 1 MBPS UPLINK PROPOSAL SHOULD BE ADOPTED

The NBP proposed that carriers seeking to use high-cost support for broadband deployments must specify, at a minimum, an actual speed of 4 MBps down and 1 MBps up.²⁰

¹⁸ See Letter from David A. LaFuria, counsel for Alliance of Rural CMRS Carriers, to FCC Secretary Marlene H. Dortch in WT Docket No. 08-94 and 08-95, CC Docket No. 96-45, and WC Docket No. 05-337 (May 7, 2010) at 7-8.

¹⁹ Among other things, Verizon Wireless suggests that its support should be allowed to float above the levels it received in December 31, 2008, before being phased down. Such a measure would directly contradict the *Merger Order* language and would allow Verizon Wireless to escape entirely its voluntary commitment to have its support reduced to zero at the end of the five-year period.

²⁰ See National Broadband Plan at p. 135. "Actual speed" refers to the data throughput delivered between the network interface unit (NIU) located at the end-user's premises and the service provider Internet gateway that is the

The Commission has committed to update the minimum speed as technology advances, to ensure that consumers have access to increasingly fast broadband speeds.

For several reasons, the minimum speed chosen is the right one. In many rural areas, citizens cannot get access to DSL, and many carriers that have been collecting high-cost support for decades have neglected to roll out broadband without government support dedicated to that purpose. As the Commission's data demonstrates, there are far too many rural areas with dial-up or slow DSL access.²¹

Many rural areas can be quickly built out using wireless infrastructure. Current 3G technologies can deliver high-quality broadband service to consumers, and also provide the side benefit of mobility for laptop and smart phone access. Coming LTE networks have the potential to deliver speeds far in excess of 4 MBps down, which in many rural areas will more than be ample because lower population densities will allow faster throughput than in crowded urban areas.

The landline industry opposes the 4/1 minimum, most likely because it would open up the Connect America Fund ("CAF") to competition, rather than having it walled off for financing fiber-to-the-home builds on a "rate of return" basis which would make the investments virtually risk free.²² At the same time, landline industry groups support proposed Congressional

shortest administrative distance from that NIU. However, the NBP proposes that the technical definition of "actual speed" be "crafted by the FCC, with input from consumer groups, industry and other technical experts[.]" *Id.* at n.2.

²¹ See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, Sixth Broadband Deployment Report, GN Docket No. 09-137, FCC 10-129 (rel. July 20, 2010) ("6th Broadband Report") at ¶ 28 (finding that approximately 80 million American adults do not subscribe to broadband at home and approximately 14 million to 24 million Americans do not have access to broadband today). See also *id.* at Table 5, Residential High-Speed Connections by Technology and Speed as of December 31, 2008.

²² See, e.g., Comments of the Nebraska Companies on the National Broadband Plan, the Gap Analysis, the FCC Model, and the NOI/NPRM, at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020550974>.

legislation that preserves rate of return regulation, while also providing for waivers (in some cases automatic waivers) from a requirement that landline carriers construct broadband.²³

To be clear, wireline carriers prefer speeds set so high that wireless carriers cannot compete, but they also want exemptions so that if they do not invest, competitors won't either. That is antithetical to the NBP, which seeks to accelerate deployment for rural consumers, and it certainly doesn't sound like a plan for deployment that is consistent with the sentiments described by Senator Rockefeller in his August 2 letter.

The 4/1 minimum is just that, a minimum. Wireline carriers are free to invest in facilities that provide much higher speeds, and they will gain competitive advantages that flow therefrom. Adopting the proposed 4/1 standard will allow all entities to compete for customers and support in rural areas, on a competitively neutral basis. The Commission's commitment to increase the minimum speed, commensurate with the advancement of broadband technologies, is the best way to see that rural consumers see the benefits of broadband at the earliest possible date.

III. THE COMMISSION SHOULD CONSIDER USING A MODEL, AND DESIGN IT TO ALLOW CARRIERS TO COMPETE FOR CUSTOMERS AND SUPPORT IN RURAL AREAS

The Commission is considering the use of a model to help determine the efficient costs of building broadband networks in rural areas.²⁴ A model that is accurate and periodically updated to reflect current technologies can be a powerful tool to ensure that support is used wisely and that carriers compete for customers and support.

²³ See, Universal Service Reform Act of 2010, H.R.5828 at Section 104(a)(1)(E) http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h5828ih.txt.pdf.

²⁴ See NOI at ¶ 14.

In Mississippi and nine other states, a model is used in areas served by “non-rural” (landline) carriers to determine support levels, and support is disaggregated so that competitive carriers do not get any support when they serve customers in urban wire centers but they do get support when they build networks in rural areas and get customers.

Cellular South favors continued exploration of a forward-looking cost model to determine high-cost areas, and ultimately to determine appropriate support levels for all carriers offering service in an area. Properly constructed, a model can apportion an appropriate level of support to a high-cost area, while preserving the benefits of competition. Because support is calculated by the number of subscribers, a model would act as a cap on support, no matter how many carriers attempt to build facilities and enter.

Cellular South urges the Commission to design a model to ensure a quality of service in rural areas that is reasonably comparable to that available in urban areas. That is the only way to further the Congressional goal that support to high cost areas be sufficient and predictable so that rural consumers have access to reasonably comparable services at reasonably comparable prices. Cellular South rejects statements that multiple carriers, each providing spotty service in rural areas, provide citizens with reasonably comparable and competitive services. The Commission must, to the greatest extent possible, preserve the ability of consumers in high-cost areas to choose the carrier that best suits their needs so that market forces can compel service providers to continually improve their quality of service.

The comments reflect a widespread agreement that more accurate targeting of support is needed.²⁵ A model is capable of identifying high-cost areas that have difficult terrain, low

²⁵ See Nebraska and North Dakota Comments at 9; RCA Comments at 8-9, 14; Wyoming PSC Comments at 10-11.

population density, and other challenges, and eliminating low-cost areas from eligibility for support. Driving support to the areas that need it most can be an effective means of ensuring that support is invested efficiently. In fact, the Commission could do it immediately by simply requiring rural local exchange carriers to disaggregate support under Section 54.207 of the rules, something it could have done at any time over the past ten years.

Disaggregation is nothing new. The proposal goes all the way back to 1996, when ILECs advocated disaggregation as a means of preventing cream skimming²⁶ and the FCC stated that accurately targeting support is needed to direct investment to the areas that need it most.²⁷

The FCC long ago adopted rules for targeting support to areas served by rural ILECs,²⁸ however the failure to make disaggregation mandatory upon competitive entry has artificially increased overall support because 90% of rural wireline carriers have declined to target support to high-cost areas. Accurately targeting support is critical to delivering benefits to consumers living in the most remote areas, who need the benefits of new investment the most.

It is important to understand that under the current rules, disaggregation will not change the support levels provided to ILECs. All of the evidence we have examined leads to the conclusion that disaggregation will reduce the overall support being provided to CETCs in the short term, although it is by no means certain that support would be reduced in every ILEC study area.

The FCC's rule for targeting support should be made mandatory, requiring incumbent carriers to more accurately identify those wire centers (or portions of wire centers) that are high-

²⁶ See *First Report and Order*, *supra*. 12 FCC Rcd at 9438.

²⁷ See *RTF Order*, *supra*. 16 FCC Rcd at 11302.

²⁸ 47 C.F.R. § 54.315.

cost to serve. Experts who perform the analysis needed to target support have indicated that it is not difficult to do.²⁹

IV. A REVERSE AUCTION METHODOLOGY IS INCONSISTENT WITH THE TELECOMMUNICATIONS ACT OF 1996 AND SHOULD THEREFORE BE REJECTED

In 2001, the Commission stated, “[i]n the 1996 Act, Congress established principles for the preservation and advancement of universal service in a competitive telecommunications environment.”³⁰ In 2008, the Commission tentatively concluded, without providing a single citation, that the federal universal service mechanism should not be supporting multiple competitors in areas that would be prohibitively expensive for one carrier to serve without a subsidy.³¹ This unsupported conclusion flies directly in the face of Section 214 of the Act, which states that the FCC *shall* designate multiple carriers in areas served by non-rural carriers and *may* designate multiple carriers in areas served by rural carriers.³² Moreover, it contradicts without explanation or factual underpinning, the FCC’s prior decision that competition and universal service are dual goals that must be served equally.³³ Unfortunately, the NBP adopted similar

²⁹ In the Matter of Eligible Telecommunications Carriers, Annual certification for continued eligibility to receive federal universal service fund high cost support pursuant to 47 CFR §54.314; and annual certification of non-rural ILEC basic service rates pursuant to 47 CFR §54.316, UM 1217, Testimony of Don J. Wood (filed Feb. 8, 2006) at pp. 46-49 (describing how disaggregating an ILEC’s high-cost support requires just two hours of work involving the creation of an Excel spreadsheet using any of several proxy models).

³⁰ *RTF Order*, *supra*, 16 FCC Rcd at 11252 (¶ 14).

³¹ *High-Cost Universal Service Support (Reverse Auctions)*, *Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking*, 23 FCC Rcd 1531 (2008) at ¶ 10.

³² 47 U.S.C. § 214(e)(2); *see also* 47 U.S.C. §§ 254(b)(3), 254(b)(5).

³³ *USF First Report and Order*, 12 FCC Rcd at 8787-88 (¶ 19), 8791-92 (¶ 25); *see Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, *Tenth Report and Order*, 14 FCC Rcd 20156, 20160 (¶ 3) (1999); *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, *Fifth Report and Order*, 13 FCC Rcd 21323, 21326 (¶ 6) (1998).

recommendations, again without factual support, for the proposition that multiple CETCs are responsible for increasing support levels.

The NBP did recommend the use of a forward-looking cost model to provide support at the minimum cost, consistent with prior Commission pronouncements. For example:

Support based on forward-looking models will ensure that support payments remain specific, predictable, and sufficient, as required by section 254, particularly as competition develops. To achieve universal service in a competitive market, support should be based on the costs that drive market decisions, and those costs are forward-looking costs.³⁴

And,

The Commission explained that support based on forward-looking economic costs provides sufficient support without giving carriers an incentive to inflate their costs or to refrain from efficient cost cutting.³⁵

Although the Commission is now embracing models as a possible means of determining appropriate support levels in high-cost areas, it continues to view reverse auctions as viable, despite a clear Congressional mandate that all markets are to be opened to competition and consumers in rural areas deserve comparable services at comparable prices as those available in urban areas.

Cellular South opposes the Commission's proposal to use reverse auctions as a means of providing universal service in rural areas. It fails to uphold the Commission's own goal of advancing the dual goals of universal service and competition and denies Americans the very benefits that universal service was intended to deliver.

³⁴ *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket No. 96-45, CC Docket No. 96-262, Seventh Report and Order, 14 FCC Rcd 8078, 8103 (¶ 50) (1999) (footnote omitted).

³⁵ *RTF Order*, 16 FCC Rcd at 11252 (¶ 15).

We provide below some more granular commentary on specific aspects of reverse auctions.

A. Auctions Cannot Yield Competitively Neutral Results Until Competitive Networks Exist.

The use of auctions to determine high-cost support would not yield the right result if one carrier (*e.g.*, the incumbent LEC) is fully built out in the area, and the other(s) (*e.g.*, the competitive ETCs such as wireless carriers) have immature networks. Until there are mature wireless networks and regulators can determine that an area is competitive, the use of auctions will not be competitively or technologically neutral. A carrier with an immature network, that needs substantial capital to construct network facilities throughout an area, cannot reasonably be expected to bid competitively against a carrier that has already completed a network build-out and does not require such capital.

This is true even if the newcomer is substantially more efficient, because it is impossible to know what to bid until a network has been fully constructed. Once a competitive network has been constructed, a competitor will have sufficient information regarding construction and operating costs to bid on a level playing field with an incumbent.

In its *South Dakota Preemption Order*, the Commission made clear that a carrier cannot be required to construct facilities in an area before it has been designated as an ETC, otherwise no carrier would invest.³⁶ The entire purpose of the “per-line” support mechanism is to provide funds to a competitive ETC only when it gets a customer. This allows a carrier to invest knowing that it has been designated; however, it must invest risk capital in order to capture customers.

³⁶ *Federal-State Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, *Declaratory Ruling*, 15 FCC Rcd 15168, 15173 (2000) (“*South Dakota Preemption Order*”).

Under the FCC's *Reverse Auctions NPRM*, a newcomer, who has no idea how much it will cost to construct and operate a network in a particular area, would be required to bid at an auction against an incumbent or other carrier with a mature network. A key element of a successful auction is that all bidders must have equal knowledge about the item up for bid. The disparity in knowledge between a carrier that is trying to enter and one that has operated for many years (or many decades) is so substantial as to preclude a fair process.

For all of these reasons, any auction that goes forward with networks of varying maturity will fail the test of competitive neutrality.

B. The FCC's Rules Must Incorporate Principles of Competitive and Technological Neutrality.

Competitive neutrality is a core universal service principle.³⁷ The 1996 Act forbade federal universal service policies that favor one carrier or technology over another.

Whatever the Commission does, it must follow its own core principle of competitive neutrality and promote the twin goals of advancing universal service and promoting competition throughout America. Critical to this mission is establishing an appropriate amount of support that is targeted to the highest-cost areas, and inviting all technologies to compete for the support and the customer. It is unclear to Cellular South how the FCC could adopt a reverse auction methodology that is consistent with its principle of competitive neutrality. Nothing in the NBP recommendation or the NPRM/NOI provides sufficient legal analysis to support such a conclusion.

³⁷ *USF First Report and Order*, 12 FCC Rcd at 8801 (“Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”).

Moreover, auctions treat competitors unfairly because they freeze the designated support areas into place. That is, when a competitor acquires new spectrum, either from another carrier or in a new spectrum auction, it will be precluded from becoming an ETC in that area and accessing high-cost support that would otherwise be used to accelerate deployment of broadband networks. This would be the case even if the carrier had a lower cost structure or a better service that consumers would prefer. It would be far better for the Commission to encourage new entrants that are willing to invest risk capital to build out in rural areas, displacing existing carriers with a service that consumers prefer.

C. Any Mechanism That Insulates Any Carrier from Competition Must Be Rejected.

A reverse auction will cement into place a dominant, subsidized carrier, requiring significant regulatory intervention and a skewing of otherwise competitive markets that could deliver significant and sustainable benefits to consumers and society. Any auction is going to require the Commission to regulate rates, service quality, interconnection, and other terms in order to effectively create an “artificial marketplace” as a substitute for the open marketplace that will be destroyed when the government selects a monopoly provider in an area.

All of this will come at a time when wireless competitors are attempting to aggressively build new networks to compete for consumers. An auction will choke off investment by all but the winner(s) and effectively deny rural consumers the benefits of many new technologies and solutions. An auction reduces competition, a result that should only ensue in the most remote areas of the Nation, not the vast majority of rural areas that could support competition if a subsidy program were tailored to provide support only to the carrier that gets the customer. Ironically, that is precisely the system the Commission has in place for competitors, whose

support is fully portable. The proper answer is to extend full portability to *all* market participants so that competitors make market-based decisions to enter, construct, and serve, and rural consumers have *choices* in services that are reasonably comparable to those in urban areas.

Limiting universal service support to only one competitive provider, and presumably compensating that provider for the cost of constructing an entire network, would not result in less support being paid out than a system of providing portable support based on the costs of constructing an efficient network, to any number of carriers, using any technology that can deliver the supported services and is willing to compete.

One of the most serious misconceptions in today's universal service debate was legitimized by the former FCC chairman, who argued that "multiple competitors" should not be subsidized.³⁸ This concept made its way into the recommendations of the Joint Board as reluctance to subsidize "multiple networks."³⁹ Unfortunately, the NBP picks up on some of this thinking. Today, it is impossible to subsidize the cost of constructing multiple networks in their entirety because the amount of support in any given area is effectively capped by the number of customers within that area. Were the FCC to apportion an appropriate level of support within an area, and make it portable to all carriers, there would be no growth in the fund. This mechanism, which provides a sufficient and predictable amount of support, along with a market-based incentive for carriers to enter and compete, is demonstrably superior to an auction mechanism that constrains consumer choice and requires expensive and aggressive regulation.

³⁸ See, e.g., *Virginia Cellular, LLC*, 19 FCC Rcd 1653, 1601 (2004), Dissenting Statement of Commissioner Kevin J. Martin.

³⁹ *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 19 FCC Rcd 10800, 10839 (¶ 95) (2004) (seeking comment on Joint Board Recommended Decision finding, among other things, that "[s]upporting multiple connections for multiple networks is not necessary to achieve reasonably comparable access in rural areas, and creates a potential for fund growth that threatens the sustainability of the universal service fund.")

D. Auctions Would Not Fit Within the Statutory Scheme for Universal Service.

Section 254(b)(5) states that universal service mechanisms should be specific, predictable, and sufficient to preserve *and advance* universal service. Using auctions might result in support being specific and predictable; however, it would not be sufficient to advance universal service in many rural areas.

Using reverse auctions would only provide the supported services at affordable rates if the Commission or the states actively regulated rates — since competition would be stifled. Regulating the rates of any wireless carrier, or worse *only a wireless carrier that is an ETC*, is simply not an option and is contrary to the deregulatory statutory scheme for CMRS providers. Nor is it a policy direction the FCC should be embracing at the very time that it is systematically deregulating rates for wireline carriers.⁴⁰

An auction would perpetuate a monopoly (or, a duopoly environment if a separate auction is conducted for wireline and wireless technologies). It would forestall all of the innovation currently seen in urban areas — such as flat-rated nationwide local service offerings from large incumbent LECs. This is inferior to encouraging competitive entry and the natural price competition that comes with it. Locking rural America into a single network would not *advance* universal service — it would do precisely the opposite — much to the advantage of entrenched carriers who can forestall competition or develop business plans to provide such services themselves free of competition and with the implicit support contained in current universal service mechanisms. This is precisely the *opposite* of productive, forward-looking universal service reform.

⁴⁰ Among others, NASUCA noted the likelihood that an auction would lead to the need for rate regulation. NASUCA NOI Comments at p. 11.

In addition to rate regulation, presumably the Commission would have to impose on ETCs obligations similar to those contained in Section 251 of the Act⁴¹ in order to open up these monopoly networks to other carriers who wish to enter without support through resale or Unbundled Network Element (“UNE”) platforms — as this would be the only viable way to provide some minimal level of competition. That is assuming, of course, that the FCC effectively set UNE rates at a level needed to provide an incentive for competitors to enter. An auction would likely frustrate the FCC’s policy move away from UNE platforms. Again, these additional layers of regulation are the *opposite* of what the 1996 Act demands — that universal service mechanisms help to deregulate the marketplace and promote competition for all Americans, not just those living in urban areas.

Nor is there any indication that auctions would provide support that is sufficient to both preserve and advance universal service. It is critical to America’s place in the world that modern networks be constructed in rural areas. The entire focus of the fund should shift toward extending both fixed and mobile wireless networks so that rural consumers have the same opportunities as those in urban and suburban areas to attract new businesses.

Reverse auctions would not promote the availability of reasonably comparable services at reasonably comparable rates in rural areas. This is the most critical of universal service goals. Auctions would limit the ability of carriers to compete in many areas and the benefits of innovation, service choices, and new technologies will be delayed or denied to consumers in many rural areas. The much better course is to reaffirm the existing principle of competitive neutrality by providing fully portable per-line support to all carriers willing to offer the supported services throughout a designated service area and by capping such support at a level needed to

⁴¹ 47 U.S.C. § 251.

provide consumers with similar choices in telecommunications services as are available in urban areas.

In sum, auctions would not advance the universal service principles embodied in Section 254 of the Act as well as the current system, which provides support to all eligible carriers in a competitively neutral fashion.

E. A Ten-Year Term for an Auction Winner Would Exacerbate the Problem of Stranded Plant.

Any proposal to provide an auction winner with an exclusive term is problematic because installed telephone plant is comprised of long-term assets that are generally fixed into the ground (concrete, tower, T-1, microwave), and that have lengthy depreciation schedules. Dismantling a network at the end of a term is not practicable. This “stranded investment” issue would be far worse than the existing wireline problem, as much wireline plant in service today is decades old and fully depreciated.⁴²

F. Making All Support Portable is the Only Way to Fulfill the Congressional Mandate that Support be for Consumers, Not Carriers.

In its very first post-1996 Act order, the FCC stated:

Federal universal service support will be distributed based on the interstate portion of the difference between the forward-looking economic cost of providing service and a nationwide revenue benchmark. The amount of support will be explicitly calculable and identifiable by competing carriers, *and will be portable among competing carriers, i.e., distributed to the eligible telecommunications carrier chosen by the customer.*⁴³

⁴² In addition, it is intuitively unwise to anoint one entity the winner and sole recipient of support for a 10-year period, essentially placing all of the USF’s eggs in one basket and giving the winner little or no incentive to perform well to earn its exclusive status.

⁴³ *USF First Report and Order*, 12 FCC Rcd at 8786 (emphasis added).

A critical component of making universal service mechanisms work with competitive markets is *portability*, that is, providing support only to the carrier that a consumer chooses. The Commission has always embraced portability, even though it has not been fully implemented,⁴⁴ and the courts have ruled that the statute requires portability.⁴⁵

If a universal service mechanism resulted in a set amount of support being made available for a particular area (whether on a per-line, per minute, or per MB of throughput), then *any* carrier willing to invest risk capital in that area and take on universal service obligations would be eligible to receive that support. It would matter not whether one carrier entered or ten carriers entered. The amount of support in an area would be capped by the amount of support apportioned for that area.

If the current per-line support mechanism were properly implemented throughout the country, incumbent carriers would lose support when they lose customers, *just as wireless carriers do today*.⁴⁶ Once the Commission determines that an amount of support within a targeted area is sufficient to meet the Act's goals, overall support need not increase as new competitors enter.

G. A Reverse Auction is not a "Market-Based" Mechanism.

Cellular South agrees that market-based mechanisms for distributing support are preferable to government selected monopolies. However, a reverse auction is not a market-based mechanism. It would mean competition in a government auction room as opposed to competition in the marketplace.

⁴⁴ See, e.g., *id.* at 8788, 8944; *USF Seventh Report and Order*, *supra*, 14 FCC Rcd at 8113; *Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, 15 FCC Rcd 16,227, 16232 (2000).

⁴⁵ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000).

⁴⁶ See Section II.A.1., *supra* (citing the *USF Ninth Report and Order*).

A market-based mechanism works within increasingly competitive markets, to assist the marketplace in developing competition needed to bring consumer benefit. In the mobile world, the amount of support needed to fill in many rural areas with cell sites that knit together networks is far less than the cost of building an entire network. That is, support should be limited to an area, but any carrier can access it – and multiple carriers accessing it to improve their coverage to the benefit of consumers.

V. PHASE-OUTS OF SUPPORT PROVIDED UNDER EXISTING MECHANISMS SHOULD BE DONE ON SIMILAR TIMETABLES

There was widespread agreement in the comments that that phase-outs of support provided under existing mechanisms should not occur until new support mechanisms are adopted and implemented.⁴⁷ Only carriers seeking to crowd out competition advocated phase downs before having a new mechanism in place.⁴⁸ There was also significant agreement that phase downs should be symmetrical, and not afford an advantage to any class of carrier. At this stage, new support mechanisms have not been developed, and the work needed to complete a model or other support mechanism will take time.

NASUCA supported the NBP recommendation to phase out CETC funding under existing mechanisms over a five-year period.⁴⁹ According to NASUCA, CETCs are primarily wireless companies who deployed their services in order to chase universal service funding, who

⁴⁷ See, e.g., U.S. Cellular Comments at 26-27; CTIA Comments at 7; Sprint Comments at 14; USA Coalition Comments at 25.

⁴⁸ See, e.g., Windstream Comments at 31-33; CenturyLink Comments at 42..

⁴⁹ See NASUCA NPRM Comments at 15.

operate in fully competitive markets, and who will have ample opportunity to seek justified support as they deploy future wireless service in unserved and underserved market areas.⁵⁰

NASUCA's views simply don't stand up to scrutiny. Competitive carriers, including Cellular South, are using support to build new cell sites in areas with poor service, or no service. NASUCA's members can find evidence of how competitive carriers are using support in virtually every state based on the quarterly or annual reports filed with the FCC or state commissions. Each quarter, we at Cellular South provide the Mississippi Public Service Commission with a report demonstrating our progress in building out a high-quality network in rural Mississippi. U.S. Cellular submitted maps with its comments demonstrating how many areas within four states that it serves require substantial additional investment to give rural consumers access to advanced communications services that are reasonably comparable to those in urban areas.⁵¹

⁵⁰ See *id.* at 16.

⁵¹ See U.S. Cellular Comments at 5, Exhibit 1.

When considering the societal value of providing support to competitors, it is important to note that the consumers' cost of a wireless minute of service has fallen from 30 cents per minute in 1999 to just over five cents per minute in 2008, even taking into account the cost of universal service contributions.

<p style="text-align: center;">Per-Minute Cost of Wireless Service (Including USF Contributions)</p> <p style="text-align: center;">(1995-2008)</p> <p>Sources: FCC, <i>Trends in Telephone Service</i>, Table 19.17 (Aug. 2008); <i>Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services</i>, WT Docket No. 09-66, Fourteenth Report, FCC 10-81 (rel. May 20, 2010), at para. 190 (Table 19)</p>				
YEAR	(A) AVERAGE REVENUE PER VOICE MINUTE (\$) ^{1/}	(B) CONTRIBUTION FACTOR (%) ^{2/}	(C) PER MINUTE COST OF CONTRIBUTION FACTOR (\$) ^{3/}	TOTAL COST PER MINUTE (\$) (A) + (C)
1995	0.4300			
1996	0.3800			
1997	0.3700			
1998	0.2900	3.1625	0.0092	0.2992
1999	0.2200	3.0143	0.0066	0.2266
2000	0.1800	5.6980	0.0103	0.1903
2001	0.1200	6.8445	0.0082	0.1282
2002	0.1100	7.1625	0.0079	0.1179
2003	0.1000	8.7701	0.0088	0.1088
2004	0.0800	8.8000	0.0079	0.0879
2005	0.0600	10.5500	0.0074	0.0674
2006	0.0600	10.1750	0.0071	0.0671
2007	0.0500	10.9250	0.0055	0.0555
2008	0.0500	11.0750	0.0055	0.0555
<p>^{1/} Data covers the last six months of each year.</p> <p>^{2/} The listed number for years 1998-2008 is an average of the four quarterly contribution factors.</p> <p>^{3/} Calculated by multiplying the average revenue per minute (A) by the contribution factor (B)</p>				

There are two significant factors accounting for the fall of mobile wireless pricing shown in the table. First and foremost, the presence of competition in wireless markets has pushed rates

for wireless services downward.⁵² The Commission’s implementation of universal service policies to foster competitive entry in rural and high-cost areas has paid dividends, because competitive markets inherently serve as a check on service providers’ pricing.

A second driver in lowering mobile wireless pricing has been the significant universal service reforms that substantially reduced the cost of terminating telephone calls. The Interstate Access Support (“IAS”) and Interstate Common Line Support (“ICLS”) reforms adopted by the Commission have had the effect of moving support from implicit to explicit mechanisms, thus significantly lowering barriers to investment for wireless carriers. Moreover, the burden on consumers to contribute to universal service mechanisms *declined* during the period shown in the table because of the explosion of minutes of use as a result of competition and lower pricing.

Prior to this reduction in implicit support, wireless carriers had been reluctant to build cell sites in rural areas because implicit support provided to rural incumbent local exchange carriers (“LECs”), reflected in artificially high carrier access rates, undermined any plausible business case for cell site construction. The combination of lower terminating access charges, and the ability of wireless carriers to access universal service support on a competitively neutral basis, has significantly accelerated investment by wireless carriers by lowering the cost of wireless network deployment. This has increased competition in rural America—precisely the goals set forth by Chairman Genachowski in his New America Foundation speech earlier this year. These policies are working and U.S. Cellular believes they can and should be continued.

⁵² While the competitiveness of the wireless marketplace has benefited consumers by driving down the price for wireless services, U.S. Cellular is concerned about recent trends of concentration in the wireless marketplace. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, FCC 10-81 (rel. May 20, 2010) at para. 4 (emphasis added) (noting that “[o]ver the past five years, concentration has increased in the provision of mobile wireless services. The two largest providers, AT&T, Inc. (AT&T) and Verizon Wireless, have 60 percent of both subscribers and revenue, and continue to gain share One widely-used measure of industry concentration indicates that *concentration has increased 32 percent since 2003 and 6.5 percent in the most recent year for which data is available.*”).

VI. THERE IS NO RECORD EVIDENCE TO SUPPORT A BLANKET CLAIM THAT WIRELINE CARRIERS ARE THE MORE EFFICIENT PROVIDER OF BROADBAND SERVICES

CenturyLink makes an unsupported claim that existing network providers serving remote regions are the most likely source of expanded broadband coverage because they can more economically build expansions to their existing networks to accomplish the goals of NBP.⁵³ Unsupported and self-serving arguments are no substitute for fact-based analysis. The Commission's work to define the broadband gap establishes that it will be very costly to build out fiber to the node or to the premises in rural areas. In many circumstances, fixed or mobile wireless connections may provide consumers with access that is less costly, more reliable, and sufficient to fulfill the Act's goals of reasonable comparability. Given that some carriers have failed to roll out service after so many decades, any claims that they would now be an efficient provider of services should be carefully considered.

Any upgrading of outdated telephone plant must be done within the context of providing support based on the cost of efficient technologies and on the forward-looking cost of deployment. The Commission need only provide an efficient level of support to high-cost areas and make that support available to any carrier that gets the customer. Once that is done, each carrier may operate its business in any fashion it so chooses, without the need for burdensome audits. Inefficient investments will be on the carrier's nickel, as they should be. Consumers will be well-served by having the ability to choose the carrier that best serves their interests, and in most cases that will be the carrier who is an efficient provider of services. Any presumption that

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See CenturyLink Comments at 3.

any class of carrier will be an efficient provider of services must be rejected in favor of a fact-based analysis that targets efficient support to carriers that consumers choose.

VII. ALL EXPLICIT SUPPORT MECHANISMS MUST BE ADMINISTERED ON A COMPETITIVELY NEUTRAL BASIS

In defiance of the Commission's prior orders establishing the Interstate Access Support ("IAS") and Interstate Common Line Support ("ICLS") mechanisms, CenturyLink seeks to deny competitors access to IAS and ICLS.⁵⁴ Cellular South respectfully disagrees with CenturyLink's proposal, which would frustrate the pro-competitive and pro-consumer objectives underpinning the Commission's decision to make this funding portable to competitors. IAS and ICLS represent implicit high-cost support that was formerly hidden within carrier access charge rate structures. CenturyLink's view cannot be squared with that of the Commission:

Specifically, we align the interstate access rate structure more closely with the manner in which costs are incurred, and create a universal service support mechanism to replace implicit support in the interstate access charges with explicit support that is portable to all eligible telecommunications carriers. Our actions are consistent with prior Commission actions to foster competition and efficient pricing in the market for interstate access services, and to create universal service mechanisms that will be secure in an increasingly competitive environment. *By simultaneously removing implicit support from the rate structure and replacing it with explicit, portable support, this Order will provide a more equal footing for competitors in the local and long distance markets, while ensuring that consumers in all areas of the country, especially those living in high-cost, rural areas, have access to telecommunications services at affordable and reasonably comparably rates. This Order also is tailored to the needs of small and mid-sized local telephone companies serving rural and high-cost areas, and will help provide certainty and stability for rate-of-return carriers, encourage investment in rural America, and provide important consumer benefits.*⁵⁵

⁵⁴ See CenturyLink Comments at p. 35.

⁵⁵ Multi-Association Group (MAG) Plan For Regulation Of Interstate Services Of Non-Price Cap Incumbent Local Exchange Carriers And Interexchange Carriers, Second Report and Order and Further Notice of Proposed

When the FCC moved implicit support that was present in carrier access rates into an explicit universal service program, it was fulfilling its mandate under Section 254 of the Act to ensure that support is explicit.⁵⁶ The MAG order was “tailored” to mid-size local exchange carriers, such as CenturyLink. The Commission’s decision came by way of the Joint Board’s Rural Task Force, which included several ILEC members or representatives.⁵⁷ By making support available to all carriers, the Commission was acting in furtherance of its own core principle of competitive neutrality.

CenturyLink’s statement that IAS or ICLS should not be made available to competitors has no basis in the Act, in the Commission’s rules, or in its prior decisions. CenturyLink would have Cellular South’s customers contribute to universal service mechanisms that benefit CenturyLink’s customers (and shareholders) while objecting to competitors having access to support on a level playing field. Competitively neutral explicit support mechanisms must confer advantages to carriers who win customers, or offer service more efficiently, in the same way that the rest of the business world operates. Verizon recognizes that IAS/ICLS “was not intended to insulate carriers from changes in the market and advances in technology.”⁵⁸

Universal service reform must continue to strip away set-asides and other artificial structures that insulate incumbents from the business world and prevent our nation’s citizens from accessing the services they want and need.

Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19617 (2001) (emphasis added).

⁵⁶ 47 U.S.C. § 254(e) (stating that universal service support “should be explicit and sufficient to achieve the purposes of this section.”)

⁵⁷ The Rural Task Force membership can be found at [http://www.wutc.wa.gov/rtf/old/RTFPub_Backup20051020.nsf/e1b9e65978d9348b882567d2008318d3/05dd900fe64a724a882567ed00007ae8/\\$FILE/Rtfwp1.pdf](http://www.wutc.wa.gov/rtf/old/RTFPub_Backup20051020.nsf/e1b9e65978d9348b882567d2008318d3/05dd900fe64a724a882567ed00007ae8/$FILE/Rtfwp1.pdf)

⁵⁸ Verizon Comments at p. 16.

VIII. RATE OF RETURN REGULATION MUST END

Over the past ten years, over \$30 billion has been spent by the high-cost support mechanism on fixed voice services. Much of that investment has been made in landline carriers without proper accountability for how funds are invested. Many carriers repeatedly exceed their supported rate of return without having support levels adjusted.⁵⁹ The root of this largess is the rate of return mechanism, which establishes revenue requirements and support levels without properly taking into account where the funds go.

Available information on ILEC operations varies widely among the states. In Oregon, for example, the Public Utility Commission publishes statistics on telecommunications carriers that shed some light on the need for efficiencies. The state's most recently released information, for calendar year 2007, reveals that Qwest earned a "total Oregon rate of return" of 20.8%.⁶⁰ This figure implies that the company is earning a significant profit and may undercut Qwest's claim that it requires additional universal service support to provide an incentive to invest in Oregon.

There are two core problems with rate of return regulation:

First, under the current rate of return/embedded cost methodology, the more you spend, the more you get. If costs can be driven higher, support levels can increase, precisely the opposite of a rational model that the rest of American businesses operate under, including competitors. No commenter provided any factual basis or underlying data that would support blanket statements that wireline carriers operate efficiently under rate of return mechanisms.

⁵⁹ See, e.g., 2007 Annual Statistics of ILECs, published by the Oregon Public Utility Commission, wherein a number of wireline carriers report a Total Oregon Rate of Return well above levels indicating a need for support, some as high as 29%. See, <http://www.puc.state.or.us/PUC/telecom/stats07.pdf> (most recently available data).

⁶⁰ *Id.* at p. 9.

Audit criteria do not examine whether investments are necessary, and the details of audits are not made public. Moreover, as Fred Williamson & Associates acknowledges,⁶¹ rate of return carriers submit their costs to an ILEC trade association, and those studies are audited by a subsidiary of that same association.⁶²

There is no substitute for healthy competition to drive out excess costs from a business. With the adoption of a rational basis for support, consumers will benefit by seeing robust investment by carriers who are operating on a level playing field that is desperately needed to drive investment decisions.

Second, no matter how many customers a rate of return carrier loses, the amount of support remains level. It has been often, and erroneously, stated that there is no “problem” in the wireline support mechanism because support to incumbents has remained steady at approximately \$3 billion per year. Yet, wireline access lines dropped by 28% from 2001-2008. This represents a huge sunk cost in maintaining networks that consumers are abandoning at an accelerating pace, in favor of wireless. Cellular South agrees with Verizon that rate of return regulation is a “relic of a bygone regulatory era, one in which competition was virtually non-existent in comparison to the vibrant intermodal competition of today’s world, and more heavy-handed regulation was arguably necessary to protect ratepayers.”⁶³

⁶¹ See Fred Williamson & Associates (“FWA”) Comments at 21-22.

⁶² USAC was created in 1997 as a not-for-profit subsidiary of the National Exchange Carrier Association. See USAC Corporate History at <http://www.usac.org/about/usac/usac-corporate-history.aspx>. NECA has previously submitted advocacy in the universal service reform docket advancing a number of positions on behalf of incumbent wireline interests, including the elimination of the identical-support rule for competitors and the perpetuation of rate-of-return regulation for broadband-capable networks. See NECA Comments in WC Docket No. 05-337 (filed Nov. 26, 2008).

⁶³ Verizon and Verizon Wireless Comments at 19.

Rate of return carriers make numerous unsupported claims about how they will be harmed if support is shifted to a rational economic model, but they offer no solutions to the current and unsustainable situation. Access line counts are dropping, per-line support is rising for wireline carriers, and carrier investments in fiber plant are not subject to transparent accountability measures, as the ILEC's carrier association is responsible for reviewing data.⁶⁴ The system is rife with actual and potential issues.

The easiest fix is limiting support to each carrier based on an efficient methodology – which eliminates the possibility of gaming the system through a rate of return mechanism. Nothing the Commission does with respect to responsible fund administration will be more important than eliminating rate of return regulation.

IX. ALL CARRIERS MUST BE ACCOUNTABLE FOR SUPPORT THEY RECEIVE

Cellular South favors accountability because it enables regulators to see clearly how public dollars are being invested for the benefit of citizens in rural and high-cost areas. Most states have put in effective reporting requirements to ensure CETCs using support as required by the Act. Yet, over 400 “average schedule” wireline carriers do not report their costs and have no accountability for how support is invested. It is not enough to say that support keeps rates affordable. Rather, a demonstration must be made as to what investments are being made with funds received, and how consumers are seeing tangible benefits from support provided.

⁶⁴ See *id.* at 12-14.

X. USE OF CARRIER OF LAST RESORT OBLIGATIONS TO JUSTIFY RENT-SEEKING BEHAVIOR MUST BE REJECTED

Wireline carriers assert that they should be permitted to continue to receive the same levels of support, even as customers leave their networks, because they need to meet carrier-of-last-resort (“COLR”) obligations.⁶⁵ Cellular South has never seen a peer-reviewed academic study or any legitimate economic justification for ensuring that there is a COLR when competitors are ready, willing, and able to serve requesting customers. When there are multiple ETCs serving an area, there does not need to be a COLR in the traditional sense.

It is increasingly clear that there is no merit to the argument that COLR “obligations” serve as a rationale for make-whole universal service payments to incumbent LECs or other “revenue neutral” rent-seeking schemes.⁶⁶ This unsupported perspective about COLR “obligations” must change as the Commission explores competitively-neutral policy options to further its “goal of making broadband universally available to all people of the United States.”⁶⁷ All ETCs, *including wireless ETCs*, have an obligation to respond to reasonable requests for service. This is the federal COLR obligation and it is analogous to rules adopted by many states.⁶⁸ In addition, Section 214(e)(3) of the Communications Act of 1934 (“Act”),⁶⁹ which

⁶⁵ See, e.g., USTA Comments at 14-15; CenturyLink Comments at 12-13; FWA Comments at 2-3.

⁶⁶ See e.g., Michael D. Pelcovits, Ph.D., Microeconomic Consulting & Research Associates, Inc., *Debunking the Make-Whole Myth: A Common Sense Approach to Reducing Irrational Telecommunications Subsidies*, White Paper #3 (Nov. 17, 2008), at 25, 29 (“[T]he potential cost of [the COLR] obligation is much less than the current sources of explicit and implicit subsidies now received by the ILECs. . . . The make-whole model does not apply anymore and there is no evidence that failure to apply this model will sacrifice consumer welfare or limit the ability of the ILECs to invest in new infrastructure. It is time for reform—and a reform without apology.”).

⁶⁷ *Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan*, FCC Public Notice, DA 09-2419 (Nov. 13, 2009) at 1 (citing American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009)).

⁶⁸ See 47 U.S.C. § 214(e)(1) (requiring all ETCs to “offer the services that are supported by Federal universal service mechanisms . . . throughout the service area for which the designation is received”); see also 47 C.F.R. § 54.202(a) (requiring any common carrier in its application to be designated as an ETC to “commit to provide service

gives the Commission (with respect to interstate services) or a state public utility commission (with respect to intrastate services) authority to order a common carrier to provide service to an unserved community, is equally applicable to both wireline and wireless carriers.

Similarly, Section 214(e)(4) of the Act⁷⁰ gives state public utility commissions authority to apply COLR obligations to wireless carriers in situations where a wireless ETC becomes the only ETC in an area. In addition, several states require a wireless ETC, as a condition of designation, to be a COLR in the event that it is the last ETC serving a particular area.⁷¹

COLR obligations are rarely the reason why a carrier builds out its network to reach new customers. For example, an incumbent LEC—and, in a competitive market, a competitive LEC—will build facilities to a new residential development because the revenue opportunity from serving the new units justifies the investment. In a market with facilities-based, last-mile competition, the incumbent LEC has a market-based incentive to extend its network so that it can have the opportunity to serve these customers, rather than ceding that opportunity to a competitor. Build-out by the incumbent LEC in these cases is clearly not attributable to its COLR obligations.

Even in cases in which the incumbent LEC must extend its network pursuant to its COLR obligations, this requirement is, in most states, limited by the terms and conditions of the carrier's line extension tariff, which mitigate substantially any risk—economic or otherwise—on

throughout its proposed designated service area to all customers making a reasonable request for service.”); 47 C.F.R. § 54.202(a)(1)(i).

⁶⁹ 47 U.S.C. § 214(e)(3).

⁷⁰ 47 U.S.C. § 214(e)(4).

⁷¹ See, e.g., RCC Minnesota, Inc., Docket No. UM-1083 at p. 10 (Or. PUC, June 24, 2004); PSC 160.13(1)(a) (Wisconsin Administrative Code) (“[An ETC] is eligible to receive universal service funding under both applicable federal and state universal service programs for an area, if it,” among other things, “holds itself ready to offer service to all customers in the area.”).

the incumbent LEC.⁷² In fact, COLR obligations are generally a source of profit for incumbent LECs, because wireline carriers are not required to forgo a fair return on investment when fulfilling COLR obligations. State commissions often ensure that a return will be earned on such investments, and federal mechanisms continue providing support even when consumers discontinue service. By contrast, competitive ETCs have the equivalent of COLR obligations with no such guaranteed return on investment, and no continuing support when consumers discontinue service. Thus, rather than imposing a substantial net burden on rural incumbent LECs, COLR requirements actually provide the incumbents with a significant competitive advantage.

In sum, every new entrant seeking ETC status statutorily accepts that it might be asked to serve all customers within its service territory at some future date. Therefore, because wireless ETCs face effectively the same service obligations as incumbent LECs, there is absolutely no reason to provide incumbent LECs with a preferential level of high cost support. Any USF reform measures should reflect this reality, particularly if the Commission wants to uphold its guiding policymaking principle of competitive neutrality.

XI. CONCLUSION

The Commission deserves credit for beginning to define, in the *NOI* and *NPRM*, some bold initiatives to pave the pathway to new universal service mechanisms to support broadband deployment. Nonetheless, the record reflects serious concern that, at critical junctures, these

⁷² See, e.g., Reply Comments of General Communication, Inc., CC Docket No. 96-45 (filed Dec. 14, 2004), at 17-19 (explaining that the line extension tariffs of an incumbent LEC competitor require any customer located more than 1,000 feet away from existing facilities to pay the full cost of extending those facilities beyond 1,000 feet. The incumbent LEC customer must also agree to pay, in advance, for four years of basic local service, which is offset against construction fees. In addition, if the customer moves or otherwise drops service for any reason, the customer loses the prepaid service fees. Moreover, the cost of the first 1,000 feet of a line extension is further offset by other revenue the incumbent LEC receives from the customer during the four years of prepaid basic local service, as well as enhanced services such as vertical feature revenue or toll calling.).

proposed initiatives could seriously compromise the opportunity for mobile wireless broadband providers to bring their networks and services to rural America.

Chairman Genachowski has accurately described the potential of mobile broadband: “No area of the broadband ecosystem holds more promise for transformational innovation than mobile. . . . While mobile broadband is still in the preliminaries . . . we’ve seen enough to say some things definitively: This is a sector that can fundamental[ly] transform our society and economy.”⁷³

Cellular South urges the Commission, as it moves forward with this rulemaking, to heed the observations of the Chairman and to ensure that its USF reforms, in shifting the focus of support to broadband, effectively harness and facilitate the transformational capabilities of mobile broadband.

Respectfully submitted,

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August 11, 2010

⁷³ Chairman Genachowski Speech at 2-3.